

APPEAL NO. 021496
FILED JULY 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 16, 2002. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of _____, extended to and included the lumbar spine and that the claimant was entitled to supplemental income benefits (SIBs) for the third quarter. The appellant (self-insured) appealed the SIBs determination, arguing that, as a matter of law, the claimant failed to establish a total inability to work; that the medical evidence does not support a finding that the claimant has a total inability to work; and that the hearing officer incorrectly applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)). The claimant responds, urging affirmance.

DECISION

Affirmed.

The hearing officer's determination on extent of injury was not appealed and has become final. Section 410.169.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the third quarter. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying period (October 24, 2001, through January 22, 2002). The claimant was basing her entitlement to SIBs for the third quarter on an assertion of total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with her ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a totally inability to work, and no other records show that the injured employee is able to return to work. The self-insured argues that the hearing officer improperly applied Rule 130.102(d)(4). The hearing officer found that the treating doctor's medical records collectively, and the specific reports of May 2, 2001, and January 23, 2002, individually, constitute a narrative report which specifically explained how the claimant's compensable injury caused a total inability to work, in terms of the nature and extent of injury, the need for medication, the existence of chronic pain, and the limitations on the claimant with regard to the performance of various functions inherent in an ability to work. The hearing officer additionally explained how the functional capacity evaluation (FCE) failed to constitute a record which showed that the claimant had an ability to return to work because by its terms it concluded that the claimant could work in a sedentary to light-duty category subject to concurrence of the treating doctor, who expressly refused to concur with this conclusion. The claimant testified that her condition worsened after having gone

through the FCE. A review of the record does not indicate that the hearing officer improperly applied the applicable rule.

Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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For service by mail the address is:

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Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge